

**MANUAL**

**DOE M 515.1-1**

**Approved: 10-22-07**

# **ADVISORY COMMITTEE MANAGEMENT PROGRAM**

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**U.S. DEPARTMENT OF ENERGY**  
**Office of Management**

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**INITIATED BY:**  
Office of Management

## **ADVISORY COMMITTEE MANAGEMENT PROGRAM**

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1. PURPOSE. This Manual supplements the Federal Advisory Committee Act (FACA), Title 5 United States Code (U.S.C.), Appendix 2, as amended, and the General Services Administration's (GSA's) final rule "Federal Advisory Committee Management" Title 41 Code of Federal Regulations (CFR), Part 102-3, which establishes the policies and minimum requirements for Federal agencies to manage and administer advisory committees. The Manual provides detailed Department of Energy (DOE or Department) requirements, responsibilities, processes, and procedures for the establishment, operation, and management of advisory committees.
2. CANCELLATION. DOE M 510.1-1, *Advisory Committee Management Program*, dated 9-30-96.
3. APPLICABILITY.
  - a. All Departmental Elements. Except for the exclusions in paragraph 3c, this Manual applies to all Departmental elements. (Go to <http://www.directives.doe.gov/pdfs/reftools/org-list.pdf> for the current listing of Departmental elements. This list automatically includes Departmental elements created after the Manual is issued.)

The National Nuclear Security Administration (NNSA) Administrator will ensure that NNSA employees comply with their respective responsibilities under this Manual. Nothing in this Order will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106-65 to establish Administration specific policies, unless disapproved by the Secretary.

Accordingly, in the event that an advisory committee is established for NNSA regarding NNSA activities, words such as "concur" and "concurrence" will be construed as "consult" or "consultation" or "coordinate" and "coordination" and words such as "direct," "manage," or "ensure" will not be construed to confer authority on non-NNSA personnel to direct or control activities of NNSA personnel.

Notwithstanding any provision in this Manual, the NNSA Administrator has the authority to approve requests for exceptions to the DOE policy barring Federal and DOE site/facility management contractor employees and individuals already serving on advisory committees from advisory committee membership without the approval of the Advisory Committee Management Office. The Administrator for the NNSA will consult with the Office of General Counsel and the Advisory Committee Management Office prior to submitting a request for approval of appointment of those persons as committee members to the Secretary. Should those offices object to the Administrator's request, the Secretary or Deputy Secretary will rule on the Administrator's request, taking into account the Office of General Counsel and Committee Management Officer's positions.

- b. DOE Contractors. This Manual does not apply to contractors.
  - c. Exclusions. See Chapter I, paragraph 4.
4. SUMMARY. The seven chapters of this Manual describe the DOE Advisory Committee Management Program. The chapters are organized to provide comprehensive sources of information related to the establishment, use, and duration of Departmental advisory committees, as follows.
- a. Chapter I, general information relating to the Department's program.
  - b. Chapters II through IV, the processes and procedures for establishing, renewing, and terminating committees and appointing members.
  - c. Chapter V, information relating to advisory committee meetings.
  - d. Chapters VI and VII, travel procedures for members and committee record keeping.
5. CONTACT. Refer questions concerning this Manual and requests for additional information to the Advisory Committee Management Office, Office of the Executive Secretariat, at 202-586-3279.

BY ORDER OF THE SECRETARY OF ENERGY:



CLAY SELL  
Deputy Secretary

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## CHAPTER I. OVERVIEW

1. PURPOSE. This Manual supplements the Federal Advisory Committee Act, Title 5 United States Code, Appendix 2, as amended, and the General Services Administration's final rule, "Federal Advisory Committee Management," 41 CFR Part 102-3, which establishes the policies and minimum requirements for Federal agencies to manage and administer advisory committees. The Manual provides detailed DOE requirements, responsibilities, processes, and procedures for the establishment, operation, and management of advisory committees.
2. OBJECTIVES. This Manual provides the requirements, responsibilities, processes, procedures, and controls for the management and operation of Departmental advisory committees. Objectives include—
  - a. efficient and effective implementation of DOE's advisory committee management responsibilities through teamwork;
  - b. early involvement of DOE organizations in the development and establishment of Departmental advisory committees;
  - c. more effective program direction, accountability, and performance assurance;
  - d. control of time and costs of the advisory committee management process while maintaining its quality; and
  - e. maintaining communication and coordination among DOE program organizations, administrative offices, and ethics counsel.
3. APPLICABILITY. The provisions of FACA, as amended, 41 CFR 102-3, this Manual, and related documents issued by the GSA and the Office of Management and Budget (OMB) apply to each advisory committee established or used by the Department.
4. EXCLUSIONS. This Manual does not apply to contractors and the types of committees listed in 5 U.S.C. App. 2, Section 4(b) or 41 CFR 102-3.40 nor to committees created by the National Academy of Sciences and the National Academy of Public Administration. See also 5 U.S.C. App.2, Section 15, 41 CFR 102-3.180 and 102-3.185.

In determining whether a group reviewing or advising on matters related to any one or more management and operating contracts is subject to FACA, an officer or employee of a management and operating contractor will be treated as an officer or employee of the Department.
5. REQUIREMENTS.
  - a. In accordance with 41 CFR 102-3.105(b), an advisory committee management program must be established to govern the establishment, operation, administration, membership, meetings, and duration of advisory committees.



- b. Advisory committees will be established only when mandated by law, or when it has been demonstrated that they are needed to conduct Departmental business and that it is in the public interest.
- c. Advisory committees will not be established or retained for possible future use by the Department.
- d. Departmental resources for committees must be carefully managed and controlled.
- e. Unless there is a statutory or executive order requirement that such classes be members, the following individuals are ineligible for advisory committee membership in the absence of a waiver by the Committee Management Officer (CMO), as described in Chapter IV, paragraph 3c.
  - (1) Employees of site/facility management or integration contractors (but not their subcontractors) that provide goods or services to any program under the supervision or control of a Secretarial Officer.
  - (2) Federal Government employees (other than special Government employees). (However, Federal employees may serve in an ex officio capacity or be invited as guests whenever their participation is necessary in advisory committee deliberations.)
- f. With the exception of travel and subsistence expense reimbursement, members of advisory committees will not be compensated unless compensation is approved by the Secretary of Energy or directed by law.
- g. Advisory committees must be terminated when they are no longer relevant to the Department's mission or no longer carrying out the functions for which they were established.
- h. As described in Chapter V, paragraph 3c, DOE will publicize accurate and timely information concerning advisory committee establishment, renewal, reestablishment, and meetings, and may publicize other advisory committee activities.

6. RESPONSIBILITIES.

- a. Secretary of Energy. Agency head responsibilities delineated in FACA Sections 5, 8, 9, 10 and 14; and 41 CFR 102-3.35, 102-3.55, 102-3.60, 102-3.70, 102-3.80, 102-3.85, 102-3.105, 102-3.130, 102-3.140, 102-3.155 and 102-3.165.
  - (1) Approves the selection and appointment of members to DOE advisory committees, except those members who are appointed by the President.

- (2) Is ultimately responsible for—
  - (a) compliance with FACA and other provisions ensuring that advisory committees not be unduly influenced by their appointing authority or special interests,
  - (b) complying with conflict of interest statutes and provisions, and
  - (c) addressing, with the Office of General Counsel (GC), problems arising from advisory committee member ethical restrictions.
- b. Director of Management. Oversees the Department's Advisory Committee Management Program and keeps accounts that fully disclose costs incurred by DOE for each advisory committee sponsored by DOE organizations.
- c. Director of the Executive Secretariat.
  - (1) Acts as the Department's CMO, including administering and directing DOE's advisory committee management program and fulfilling the CMO responsibilities delineated in FACA Sections 8(b), 10(b), 12(a), and 41 CFR 102-3.115.
  - (2) Designates a Deputy CMO, who has authority to act for the CMO, to assist in administering and managing the advisory committee management program.
  - (3) Monitors the implementation of this Manual and ensures compliance with FACA, as amended, 41 CFR 102-3, and all other requirements governing advisory committee management.
  - (4) Reviews and concurs on all advisory committee packages and appraises the need for or the continuation of advisory committees.
  - (5) Signs all advisory committee charters and Federal Register documents pertaining to committee matters and ensures publication in the Federal Register.
  - (6) Ensures all advisory committee charters are filed with the standing committees of Congress, the Library of Congress, and the GSA Committee Management Secretariat (GSA CM Secretariat).
  - (7) In coordination with heads of Departmental elements and GC, ensures that advisory committees are fairly balanced in membership in terms of points of view represented and functions to be performed by committees.

- (8) Approves requests for exceptions to DOE policy on advisory committee membership in the following areas:
  - (a) Membership of DOE site/facility management or integration contractors (but not their subcontractors) that provide goods or services to any program under the supervision or control of a Secretarial Officer.
  - (b) Membership of Federal Government employees on DOE advisory committees.
  - (c) Membership of an individual on another advisory committee.
- (9) Coordinates with GC, heads of the appropriate Departmental elements, and the appropriate Designated Federal Officers (DFOs) to ensure DOE ethics and conflict of interest requirements are carried out for members of each DOE advisory committee.
- (10) Prepares and submits the annual comprehensive review on DOE advisory committees, required by Congress, to the GSA CM Secretariat.
- (11) Reviews and concurs on all requests for closing part of or all of an advisory committee meeting to the public in accordance with the criteria provided in 5 U.S.C. 552b(c).
- (12) Prepares DOE's annual report on closed advisory committee meetings and publishes a notice announcing the availability of this report in the Federal Register.
- (13) Coordinates with the Office of General Counsel in drafting regulations on advisory committees for publication in the Code of Federal Regulations and any revisions thereto; concurs in such regulations and internal procedures on advisory committees.

d. Office of Human Capital Management.

- (1) When applicable, appoints advisory committee members as special Government employees (SGEs) in accordance with 5 U.S.C. 3109, 18 U.S.C. 202(a), 41 CFR 102-3.130, and DOE O 321.1, Employment of Experts and Consultants, dated 11-6-06.
- (2) When applicable, assists Departmental elements in obtaining required security clearances in accordance with requirements in DOE O 470.4A, Safeguards and Security Program, dated 5-25-07 and DOE M 470.4-5, Personnel Security, dated 8-26-05.

- e. Office of Congressional and Intergovernmental Affairs reviews and concurs on letters sending advisory committee charters to Congress.
- f. Public Affairs.
  - (1) Issues press releases on matters of interest to the public concerning advisory committees.
  - (2) Coordinates advisory committee press releases on matters other than routine meeting schedules with the CMO.
- g. Office of General Counsel.
  - (1) Assistant General Counsel for General Law.
    - (a) Provides legal assistance and advice concerning applicability of and compliance with FACA, as amended, 41 CFR 102-3, and this Manual.
    - (b) Provides advice, as necessary, to the CMO and Departmental elements concerning their responsibilities and the organization and operation of advisory committees.
    - (c) Provides prospective legal advice on the appropriate status designations for committee membership.
    - (d) Ensures that those members serving as SGEs are aware of the ethics requirements applicable to them and representatives are informed as to the group or entity each is appointed to represent.
    - (e) Reviews and concurs on advisory committee packages proposing establishment or renewal of DOE advisory committees, amendments to advisory committee charters, members for DOE advisory committees, and conducting meetings in closed or partially closed sessions.
    - (f) Coordinates with the CMO, heads of Departmental elements, and DFOs the distribution of written guidance to all advisory committee members, oral briefings, individual counseling, and/or other methods, to ensure that Departmental ethics and conflict of interest requirements are communicated to members of each DOE advisory committee.

- (g) Provides legal assistance and advice on advisory committee management matters arising under the Freedom of Information Act (FOIA).
- (h) Coordinates with CMO in drafting regulations on advisory committees for publication in the Code of Federal Regulations and any revisions thereto; concurs in such regulations and internal procedures on advisory committees.
- (2) Assistant General Counsel for Legislation and Regulatory Law concurs on and transmits for publication all Federal Register notices of advisory committee meetings.

h. Heads of Departmental Elements.

- (1) Implement the requirements contained in FACA, as amended, 41 CFR 102-3, and this Manual for all advisory committees sponsored by their organizations.
- (2) Sign and transmit to the Secretary for approval, through the CMO and the Office of GC, recommendations and justifications for—
  - (a) establishment or renewal packages for advisory committees and advisory committee charters and
  - (b) nominations of individuals to serve as members on DOE advisory committees sponsored by their organizations.
- (3) Establish written internal procedures and controls, as necessary, for the operation of all advisory committees sponsored by their organizations and forward copies of such procedures to the CMO and GC for review and concurrence before implementation.
- (4) Recommend individuals to serve as DFOs for each advisory committee sponsored by their organizations and send signed recommendations, through the CMO and GC, to the Secretary for approval.
- (5) Review annually, in coordination with the responsible DFOs, the activities and accomplishments of the advisory committees sponsored by their organizations and submit recommendations and rationales for termination of such advisory committees through the CMO and GC to the Secretary for approval.
- (6) Ensure administrative and staff support services are provided for each advisory committee sponsored by their organizations.

- (7) In coordination with their office's DFOs, are responsible for—
    - (a) compliance with conflict of interest statutes and provisions;
    - (b) addressing, with the GC, problems arising from advisory committee member ethical restrictions;
    - (c) ensuring availability of funding for advisory committee members' attendance at meetings; and
    - (d) assuring that members have a continuing interest in the work of the committee.
  - (8) Sign and transmit to the Secretary for approval, through the CMO and GC, written determinations to close all or part of an advisory committee meeting to the public.
  - (9) Designate for each advisory committee a central location for the assembly and maintenance of advisory committee documents and records for public inspection and copying.
- i. Designated Federal Officers. DFO responsibilities are delineated in 41 CFR 102-3.120. In addition, DFOs must do the following.
- (1) Be fully knowledgeable of all the activities and developments concerning the advisory committees under his/her responsibility.
  - (2) If unable to attend or chair a meeting, designate, in writing, another DOE officer or employee to act as the DFO.
  - (3) Prepare all Notices of Open and/or Closed Meetings for publication in the Federal Register and forward them, to the CMO for signature.
  - (4) Ensure compliance with FACA, as amended, 41 CFR 102-3, and this Manual in the conduct of advisory committee meetings.
  - (5) Prepare written determinations for closing part of or all of advisory committee meetings to the public in accordance with the criteria provided in 5 U.S.C. 552b(c).
  - (6) Prepare and submit annual reports to the CMO summarizing advisory committee activities and related matters when committees have held closed meetings.
  - (7) In consultation with GC, review committee membership designations for appointment as SGEs or representatives; and ensure that SGEs are aware of the ethics requirements applicable to them and that representatives are

aware of the group or entity the Department has appointed them to represent.

- (8) Ensure that no SGE serves more than 60 days, including all such appointments, in a fiscal year.
- (9) Prepare all advisory committee proposal packages, including the required justifications and recommendations for—
  - (a) establishment of new committees, (the proposed DFO prepares the establishment package);
  - (b) renewal of existing advisory committees; and
  - (c) appointment, reappointment, and/or rotation/retirement of individuals to serve or who have served on DOE advisory committees.
- (10) In coordination with the head of his/her Departmental element is responsible for—
  - (a) ensuring SGEs complete appropriate financial disclosure reports;
  - (b) distributing written ethics and conflict of interest guidance, scheduling oral briefings, and/or other consultations with GC to ensure compliance with ethics and conflict of interest statutes and provisions, including, among other things, such matters as conflicting financial or other interests of members and member recusal;
  - (c) notifying and consulting with GC on any problems arising from the ethical and conflict of interest statutes and provisions applicable to advisory committee members;
  - (d) ensuring availability of funding for, and a quorum of, advisory committee members' attendance at meetings and that members have a continuing interest in the work of the committees; and
  - (e) monitoring advisory committee members' attendance and participation at meetings and determining recommendation of replacement of members missing a substantial number of meetings and/or not showing an interest in the work of the committee.
- (11) Ensure that detailed minutes of meetings are prepared and the information specified in 41 CFR 102-3.165 is included.

- (12) Forward 10 copies of any final report submitted by an advisory committee to the CMO for transmittal to the DOE Public Reading Room and the Library of Congress.
- (13) Review on an annual basis, in coordination with the heads of their Departmental elements, the activities and accomplishments of each advisory committee under their responsibility and prepare recommendations and rationales for termination if it is determined that such committees no longer serve their original purposes.
- (14) Maintain for each advisory committee under their responsibility, in a designated central location, all records, reports, and other papers required by FACA, as amended, 41 CFR 102-3, and this Manual.
- (15) Provide all administrative and staff support services for each advisory committee under their responsibility and keep records concerning costs incurred for providing these services.
- (16) Prepare and submit information for—
  - (a) the GSA CM Secretariat's annual comprehensive review of Federal advisory committees and their activities;
  - (b) the Department's annual report summarizing advisory committee activities and related matters, when committees have held closed meetings; and
  - (c) the Office of Government Ethics (OGE) annual agency ethics questionnaire; and
  - (d) other special reports that may be requested by the CMO, the GSA CM Secretariat, or OMB.

7. REFERENCES.

- a. 10 CFR 1010, Conduct of Employees.
- b. 41 CFR 102-3, Federal Advisory Committee Management.
- c. The Federal Advisory Committee Act, 5 U.S.C., Appendix 2 Pub. L. No. 92-463, as amended by Pub. L. No. 94-409 and Pub L. No 97-375.
- d. Government in the Sunshine Act, 5 U.S.C. 552b Pub. L. No. 94-409.
- e. DOE Organization Act, 42 U.S.C. 7234 Pub. L. No. 95-91, Section 624.,
- f. DOE M 552.1-1A, *U.S. Department of Energy Travel Manual*, dated 2-17-06.



- g. DOE G 1324.5B, *Implementation Guide for use with 36 CFR Chapter XII, Subchapter B, Records Management*, dated 7-19-96.
- h. DOE O 321.1, *Employment of Experts and Consultants*, dated 11-6-06.
- i. DOE O 470.4A, *Safeguards and Security Program*, dated 5-25-07.
- j. DOE M 470.4-5, *Personnel Security*, dated 8-26-05.
- k. Executive Order 12838, "Termination and Limitation of Federal Advisory Committees," dated 2-10-93.
- l. OMB Circular A-135, "Management of Federal Advisory Committees," dated 10-5-94.
- m. Vice President's Memorandum to heads of executive departments and agencies, "Management of Federal Advisory Committees," dated 6-28-94.
- n. Section 3113, Pub. L. No. 108-136, "National Defense Authorization Act for Fiscal Year 2004."
- o. SF 278, Public Financial Disclosure Report or OGE 450, Confidential Financial Disclosure Report.
- p. The National Nuclear Security Administration Act, Title XXXII, Pub. L. No. 106-65, as amended.

8. DEFINITIONS.

- a. Ad hoc advisory committee. A temporary committee created to serve less than 2 years.
- b. Advisory committee. See 41 CFR 102-3.25.
- c. Committee Management Officer (CMO). The designated official who is responsible for advisory committee management within the Department.
- d. Committee member. See 41 CFR 102-3.25.
- e. Committee staff member. See 41 CFR 102-3.25.
- f. Conflict of interest. Participation by a member in a particular matter that would have a direct and predictable effect on the financial interest(s) of the member, the member's spouse and minor child(ren), an entity that employs the member, an entity with which he/she seeks employment, or an entity in which he/she serves as officer, director, trustee, general partner, or employee. Additionally, the

appearance that a member's participation in committee business will result in a lack of impartiality in the performance of his/her duties because of personal, family, or financial affiliations.

- g. Consultant. An individual who serves as an advisor, giving views or opinions on problems presented to him, but who neither performs, supervises operating functions, or participates as a member of the advisory committee.
- h. Designated Federal Officer (DFO). An individual, who may be either full-time or permanent part-time, designated by the head of the sponsoring organization and approved by the Secretary to manage committee meetings and provide staff support to an advisory committee.
- i. Discretionary (nonstatutory) advisory committee. Any advisory committee established or used by the President or a Federal official, including an advisory committee that is authorized, but not specifically directed, by an Act of Congress.
- j. Ex officio member. An individual who holds membership on an advisory committee by virtue of his/her office in the private sector (serves only while an incumbent of such a position) or other Government agency unless restricted by the Committee's charter or authorizing authority, such members have the status of other members.
- k. GSA Committee Management Secretariat (GSA CM Secretariat). See 41 CFR 102-3.25.
- l. Meeting. Any interaction among a majority (quorum) of the members of an advisory committee.
- m. Quorum. A majority (one more than one half) of a committee's authorized membership.
- n. Special Government employee (SGE). An officer or employee of the executive branch of the United States Government who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time, or intermittent basis. The term includes experts and consultants. See 18 U.S.C. Section 202.
- o. Statutory advisory committee. A nondiscretionary advisory committee specifically directed by law to be established.
- p. Subcommittee. Any subgroup that advises a duly established committee. See 41 CFR 102-3.25, 102-3.35, and 102-3.70(c).
- q. Utilized (or used) committee. See 41 CFR 102-3.25.

## **CHAPTER II. ESTABLISHMENT OF ADVISORY COMMITTEES**

1. INTRODUCTION. The establishment of an advisory committee must be in accordance with FACA Section 9, 41 CFR 102-3.30, 102-3.50, 102-3.60, 102-3.65, 102-3.70 and 102-3.75. In addition to these requirements, this chapter describes the DOE requirements, procedures, and processes that must be followed to establish an advisory committee.
2. CRITERIA FOR ESTABLISHMENT.
  - a. Executive Order 12838, "Termination and Limitation of Federal Advisory Committees," dated 2-10-93, established ceilings on the number of Agency advisory committees. It further stated that an Agency cannot create or sponsor a new advisory committee unless the committee is required by statute or the Agency head finds that compelling considerations necessitate creation of such a committee and receives approval from the GSA CM Secretariat. By memorandum of 6-28-94, the Vice President ordered that any proposals to establish new committees must include plans to terminate or merge existing committees if the Department is at its maximum ceiling of advisory committees.
  - b. In addition to paragraph 2a above, the following must also be considered before establishment of an advisory committee.
    - (1) The decision criteria stated in 41 CFR 102-3.30(a).
    - (2) The feasibility of conducting DOE-sponsored symposia, public meetings, or conferences in lieu of establishing the new advisory committee.
    - (3) Satisfaction of the need for public input through solicitation of advice and information from the general or a constituent public, through a variety of channels such as notices in the Federal Register or news releases to appropriate professional journals and industry publications.
3. PROPOSING ESTABLISHMENT.
  - a. The head of a Departmental element, after careful consideration of the criteria set forth in paragraph 2 above, may propose the establishment of an advisory committee. Before submitting a formal request, however, he/she must consult with the CMO and GC for—
    - (1) advice and assistance in making determinations regarding the various factors involved in committee establishment;
    - (2) assistance on how to prepare the formal request; and
    - (3) guidance on the appropriate designation criteria for membership.

- b. All of the documentation and actions discussed in this chapter must be approved and completed before an advisory committee is considered officially established.
  - c. No advisory committee may operate, meet, or take any action until the Secretary has approved the committee and its charter and the charter has been filed.
4. ESTABLISHMENT BY SECRETARIAL DISCRETION. This paragraph covers committees established at the Secretary's discretion including those that the Secretary established as a result of legislation that authorized, but did not require, the Secretary to establish.
- a. Proposal Packages for Establishment. Proposal packages for establishment of a nonstatutory advisory committee or an advisory committee authorized by statute must include the following documents.
    - (1) An Action Memorandum addressed to the Secretary, through the cognizant Deputy Secretary or Under Secretary, if applicable, requesting approval of the establishment of the committee. The memorandum must include the following information.
      - (a) An explanatory statement, if the Department has reached its advisory committee ceiling and it is necessary to terminate or merge an existing committee in order to remain within the ceiling. The termination or merger proposal must be concurred in by the pertinent Departmental elements.
      - (b) A description of the purpose and scope of the proposed advisory committee and why the committee is in the public interest.
      - (c) An explanation of why the proposed committee's functions cannot be performed by an existing DOE or other Federal advisory committee; by DOE itself; or through the use of consultants, public hearings, or other alternative means.
      - (d) A description of the plan for ensuring a fairly balanced committee membership in terms of the viewpoints represented and the functions to be performed. The plan should ensure that in the selection of members, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and function of the committee.
      - (e) An estimate of the budget required for committee operations, and sources for funds and an estimate of the Federal work effort, in staff-years, required to support the committee.
      - (f) The organization and official responsible for the committee.

- (g) A statement of whether the members will be selected for their expertise or in a representational capacity. Members serving as experts must be appointed as SGEs and may be compensated if approved by the Secretary or directed by law. Members serving as representatives act on behalf of the group or entity specifically identified in their appointment letter. Should compensation for SGE members be proposed, the Action Memorandum will contain a statement of the basis for the proposal. Regardless of whether the members will be serving for their expertise or as representatives, there must be a statement of whether they are to receive travel expenses and per diem.
    - (h) A recommendation by name or position title, of the DOE employee who will serve as the Designated Federal Officer (DFO).
  - (2) A proposed charter for the advisory committee containing the information in accordance with FACA Section 9(c) and required by 41 CFR 102-3.75(a).
  - (3) A proposed Federal Register "Notice of Intent to Establish" the advisory committee containing the information required in 41 CFR 102-3.65 and an additional statement providing the name and phone number of the individual to contact for more information on the committee.
  - (4) Discussion of the consultation, with the proposed charter, to the Director of the GSA CM Secretariat, containing the information required by 41 CFR 102-3.60.
- b. Concurrence and Approval Procedures. The concurrence and approval procedures for the proposal package are as follows.
  - (1) The head of the Departmental element proposing establishment approves and signs the proposal package after ensuring that all required information and documentation is included and all required intraoffice concurrences have been obtained.
  - (2) The proposal package is forwarded to the CMO for review and concurrence and to the Secretary through the offices listed below for the required concurrence and approval chain. All concurrences are retained as part of the official file copy.
    - (a) Assistant General Counsel for General Law.
    - (b) Director of Management.
    - (c) Office of the Executive Secretariat, for correspondence control through the Office of the Secretary.

(d) Office of the Secretary.

- (3) Following approval by the Secretary, the approved proposal package is returned to the CMO. The CMO forwards the consultation, with the proposed charter attached, to the GSA CM Secretariat. The GSA CM Secretariat will review the proposal and notify the Secretary of its views within 15 calendar days of receipt, if possible.

c. Notifying the Public.

- (1) If the GSA CM Secretariat concurs with the establishment of the advisory committee, the CMO forwards the "Notice of Intent to Establish" to the Federal Register for publication in accordance with 41 CFR 102-3.65.
- (2) If the GSA CM Secretariat does not concur with the establishment of the advisory committee, the CMO will inform the head of the requesting Departmental element of the reasons why and return the proposal package.
- (a) If there is agreement that the reasons are valid and changes are made to correct identified problems, the package will be resubmitted to the GSA CM Secretariat for concurrence.
- (b) If it is agreed that the reasons are not valid, the Secretary of Energy will have final decision authority for establishing the committee.
- (c) If the Secretary decides to establish, the CMO will carry out the actions in paragraph 4c(1) above and paragraph 4d below.

d. Charter Filing Requirements. At the end of the 15-day public notice period, the CMO will sign and date the charter, and a copy of the charter will be filed in accordance with 41 CFR 102-3.70(a). Advisory committees are considered established when their charter is filed as described above. Prior to that, no advisory committee may meet or take any action. A copy of the charter will be sent to the DFO who is responsible for the advisory committee.

e. Establishing and Chartering Subcommittees. The requirements for establishing and chartering subcommittees are delineated in 41 CFR 102-3.35 and 102-3.70(c).

5. ESTABLISHMENT DIRECTED BY STATUTE (STATUTORY).

a. Proposal Packages for Establishment.

- (1) The proposal package requesting establishment of a statutory advisory committee must include the following documents.
- (2) An Action Memorandum addressed to the Secretary, through the Deputy Secretary or Under Secretary, if applicable, requesting approval of the

establishment of the committee. The memorandum must include the following information.

- (a) A description of the purpose and scope of the proposed advisory committee as outlined in the statute.
  - (b) A description of the plan for ensuring a fairly balanced committee membership in terms of the viewpoints represented and the functions to be performed, including the requirements outlined in the statute.
  - (c) An estimate of the budget required for committee operations and the source of the funds and an estimate of the Federal work effort, in person-years, required to support the committee.
  - (d) The organization and official to be responsible for the committee.
  - (e) A statement of whether the members will be selected for their expertise or in a representational capacity. (NOTE: Members serving as experts must be appointed as SGEs and may be compensated if approved by the Secretary or directed by law. Members serving as representatives act on behalf of the group or entity specifically identified in their appointment letter. Should compensation for SGE members be proposed, the Action Memorandum will contain a statement of the basis for the proposal. Regardless of whether the members will be serving for their expertise or as representatives, there must be a statement of whether they are to receive travel expenses and per diem.)
  - (f) A recommendation by name or position title, of the DOE employee who will serve as the DFO.
  - (g) A proposed committee charter containing the information in accordance with FACA Section 9(c) and required by 41 CFR 102-3.75(a).
  - (h) The Federal Register "Notice of Intent to Establish" and consultation with the GSA CM Secretariat are not required for statutory committees.
- b. Concurrence and Approval Procedures. The concurrence and approval procedures for the proposal package are the same as those set forth in paragraph 4b of this chapter. Consultation with the GSA CM Secretariat is not required.
- c. Charter Filing Requirements. After the establishment package has been approved by the Secretary and received by the CMO, the CMO will sign and date the charter.

- (1) A copy of the charter will be filed in accordance with 41 CFR 102-3.70(b).
- (2) A copy of the charter will be sent to the DFO who is responsible for the advisory committee.

6. UTILIZED ADVISORY COMMITTEES.

- a. General. A previously existing external entity used to provide advice to the Department may be considered a “utilized committee” covered by FACA. A utilized committee is subject to FACA only if the Department manages or controls it.
  - (1) Before exercising management and control over an existing external entity, the head of the Departmental element must coordinate with the Assistant GC for General Law to determine whether FACA is applicable.
  - (2) These committees may not be treated as Department advisory committees before completion of the establishment procedures delineated at 41 CFR 102-3.70. If available, a list of the names and affiliations of the members will be attached to the establishment package.
- b. Committee Charters. In accordance with FACA Section 9(c), the charter for a utilized advisory committee contains the same information delineated in 41 CFR 102-3.75(a), with the following modifications.
  - (1) The membership and chairperson provisions must reflect the established characteristics and size of the group.
  - (2) The provisions regarding appointment and tenure of members are excluded.
  - (3) The charter must clearly reflect that the group will—
    - (a) be considered an advisory committee only during the period or for the unique purpose that it is being used by DOE and
    - (b) comply with the provisions of FACA, as amended, 41 CFR 102-3, and this Manual when it is being used by DOE.
- c. Notification of Group. Following approval by the Secretary and consultation with the GSA CM Secretariat, a letter to the group or its sponsoring organization, with a copy of the charter, can be transmitted to the Secretary for signature.
  - (1) If the group agrees to the charter without any substantive changes, public notice in the Federal Register can take place and the charter will be signed and dated by the CMO and filed in accordance with 41 CFR 102-3.70(a).



Should the group not agree to the charter the concerned program office will meet with the group to determine a mutually agreeable charter.

- (2) A copy of the charter is sent to the DFO who is responsible for the advisory committee.

- 7. REESTABLISHMENT OF ADVISORY COMMITTEES. Any advisory committee whose charter expires must be reestablished if DOE desires or its continuance is statutorily mandated. The procedures for reestablishment are the same as those for establishment.
- 8. AMENDMENTS TO ADVISORY COMMITTEE CHARTERS. An advisory committee charter must be amended when the existing charter no longer accurately reflects the objectives or functions of the advisory committee or any other information concerning the makeup or status of the committee. Charter amendments must be prepared in accordance with 41 CFR 102-3.80 and 102-3.85 and as follows.
  - a. Nonstatutory or Discretionary Committees.
    - (1) Minor Amendments. Minor amendments to a charter include changes to the name of the committee, the estimated number or frequency of meetings, or the number of members or slight increases (10 percent or less) in operating costs.
      - (a) Amendment Package. The amendment package must contain the following documents.
        - 1 An Action Memorandum from the head of the Departmental element sponsoring the advisory committee to the Secretary, through the Deputy Secretary or Under Secretary, if applicable, requesting an amendment to a committee's charter and describing the necessary changes and reasons why the amendment is being requested.
        - 2 The amended charter.
      - (b) Concurrence and Approval Procedures. The amendment package follows the same procedures set forth for an establishment package in paragraph 4b of this chapter. (Consultation with the GSA CM Secretariat is not required for minor amendments.)
      - (c) After approval by the Secretary, the amended charter is signed and dated by the CMO and filed in accordance with 41 CFR 102-3.70(a). A copy of the charter is sent to the DFO who is responsible for the advisory committee.

- (2) Major Amendments. Major amendments to a charter include changes to the objectives, scope, or composition of the committee or a substantial increase in operating costs.
  - (a) Amendment Package. The amendment package must contain the following documents.
    - 1 An Action Memorandum from the head of the Departmental element sponsoring the advisory committee to the Secretary, through the Deputy Secretary or Under Secretary, if applicable, requesting an amendment to the committee's charter, describing the necessary changes, and reasons for the amendment request.
    - 2 The amended charter.
    - 3 The CMO will consult with the GSA CM Secretariat as required by CFR 102-3.85.
  - (b) Concurrence and Approval Procedures. The amendment package follows the same procedures set forth for an establishment package in paragraph 4b of this chapter.
  - (c) Procedures Following Concurrence and Approval. After concurrence by the GSA CM Secretariat, the charter is signed and dated by the CMO and filed in accordance with 41 CFR 102-3.70(a). A copy of the charter is sent to the DFO who is responsible for the advisory committee.
- b. Statutory or Nondiscretionary Committees.
  - (1) Minor amendments may be made to the charters of statutory committees as long as they are consistent with the relevant statute. (The procedures in paragraphs 8a(1) and 8a(2) above must be followed when requesting an amendment to a charter for a statutory committee.)
  - (2) Major amendments may not be effected if they contravene the Committee's authorizing provisions.

9. ADVISORY COMMITTEE COSTS.

- a. An estimate or report of the costs of an advisory committee must include costs associated with the following.
  - (1) Compensation of committee members, consultants to the committee, and permanent and temporary or part-time [General Schedule (GS), Wage

Board (WB), or other] positions that are part of or supportive to the committee, including all overtime related to committee functions.

NOTE: Compensation should reflect all (actual or estimated) person-years, or parts thereof, of Federal positions devoted to a particular committee's activities. It should also include the compensation of Federal employees assigned to committees, on a reimbursable or nonreimbursable basis, from Agencies or departments other than that to which the committee reports.

- (2) Benefits associated with compensation.
  - (3) Travel (including per diem) of committee members, consultants, all permanent positions, and all temporary or part-time positions that are part of or supportive to the committee.
  - (4) Transportation of equipment, display material, etc., communications, and printing and reproduction.
  - (5) Rent for additional space acquired for committee use.
  - (6) Other services required by the committee, including data processing services, management studies and evaluations, contractual services, and reimbursable services.
  - (7) Supplies, materials, and equipment acquired for committee use.
- b. The following costs should be excluded from estimates or reports of the costs of advisory committees:
- (1) indirect (overhead) costs and
  - (2) costs of the committee management system (Agency Committee Management Officers, etc.).

### **CHAPTER III. RENEWAL AND TERMINATION OF ADVISORY COMMITTEES**

1. INTRODUCTION. The renewal or termination of an advisory committee will be in accordance with FACA Section 14, which provides that advisory committees will terminate two years after the date of their establishment or extension, except statutory committees which terminate as otherwise provided by Congress and the requirements of 41 CFR 102-3.55 and 102-3.60. The renewal of an advisory committee is similar to the establishment of an advisory committee and, therefore, will also be in accordance with FACA Section 9 and the requirements in 41 CFR 102-3.60, 102-3.65, 102-3.70 and 102-3.75. In addition to these requirements, this chapter describes the DOE requirements, procedures, and processes that will be followed to renew or terminate an advisory committee.
2. CRITERIA FOR RENEWAL. The following will be considered before renewing an advisory committee.
  - a. The decision criteria stated in 41 CFR 102-3.30(a).
  - b. The feasibility of conducting DOE-sponsored symposia, public meetings, or conferences.
  - c. Satisfaction of the need for public input through the solicitation of advice and information from the general or a constituent public through a variety of channels such as notices in the Federal Register or news releases to appropriate professional journals and industry publications.
3. PROPOSING RENEWAL.
  - a. The head of a Departmental element that sponsors an advisory committee, after careful consideration of the criteria set forth in paragraph 2, above, may propose the renewal of the advisory committee. Before submitting a formal request, however, he/she must consult with the CMO for advice and recommendations.
  - b. All of the documentation and actions discussed in this chapter must be approved and completed before an advisory committee is considered officially renewed.
    - (1) The proposal package will be submitted to the CMO at least 120 calendar days before expiration of the committee's charter. This time frame includes the requirement of a minimum of 30 calendar days before expiration of the advisory committee's charter for submittal of renewals to the GSA CM Secretariat for consultation.
    - (2) No advisory committee may operate, meet, or take any action after expiration of the charter.
4. RENEWAL OF COMMITTEES ESTABLISHED BY SECRETARIAL DISCRETION. This paragraph covers renewal of committees established at the Secretary's discretion

including those that the Secretary established as a result of legislation that authorized, but did not require, the Secretary to establish.

- a. Proposal Packages for Renewal. The proposal package requesting renewal of an advisory committee must include the following documents.
  - (1) An Action Memorandum, prepared by the pertinent program office, addressed to the Secretary, through the Deputy Secretary or Under Secretary, if applicable, requesting approval to renew the committee. The memorandum must include the following information.
    - (a) A description of the continuing need for and purpose and scope of the proposed advisory committee and why the committee is in the public interest.
    - (b) An explanation of why the committee's functions cannot be performed by an existing DOE or other Federal advisory committee or another DOE component or through the use of consultants, public hearings, or similar means and an estimated target date for completion of the committee's functions.
    - (c) A summary of the committee's accomplishments and activities for the period covered by the expiring charter, including the number of meetings held, titles and dates of any reports issued, and a description of the committee's advice and recommendations rendered and DOE's use of such advice.
    - (d) A description of the plan for maintaining (or attaining) a fairly balanced committee membership in terms of viewpoints represented and the functions to be performed.
    - (e) An estimate of the budget required for committee operations and the source of funding and an estimate of the Federal work effort, in staff-years, required to support the committee.
    - (f) The organization and official responsible for the committee.
    - (g) A statement of whether the members will be selected for their expertise or in a representational capacity. Members serving as experts must be appointed as SGEs and may be compensated if approved by the Secretary or directed by law. Members serving as representatives act on behalf of the group or entity specifically identified in their appointment letter. Should compensation for SGE members be proposed, the Action Memorandum will contain a statement of the basis for the proposal. Regardless of whether the members will be serving for their expertise or as

representatives, there must be a statement of whether they are to receive travel expenses and per diem.

- (h) A recommendation by name or position title, of the DOE employee who will serve as the DFO.
  - (2) A proposed charter for the advisory committee containing the information in accordance with FACA Section 9(c) and required by 41 CFR 102-3.70.
  - (3) A proposed Federal Register “Notice of Intent to Renew” containing the information required in 41 CFR 102-3.65 and an additional statement providing the name and phone number of the individual to contact for more information on the committee.
  - (4) A copy of the proposed charter to the Director of the GSA CM Secretariat, containing the information required by 41 CFR 102-3.60.
- b. Concurrence and Approval Procedures. The concurrence and approval procedures for the proposal package are as follows.
- (1) The head of the Departmental element proposing renewal approves and signs the proposal package after ensuring that all required information and documentation is included and all required intraoffice concurrences have been obtained.
  - (2) The proposal package is forwarded to the CMO for review and concurrence and forwarded to the Secretary through the following required concurrence and approval chain. All concurrences are retained as part of the official file.
    - (a) Assistant GC for General Law.
    - (b) Director of Management.
    - (c) Office of the Executive Secretariat for correspondence control through the Office of the Secretary.
    - (d) Office of the Secretary.
  - (3) Following approval by the Secretary, the approved proposal package is returned to the CMO in the DOE Executive Secretariat.
    - (a) The CMO forwards the consultation with a copy of the proposed charter attached to the GSA CM Secretariat.

- (b) The GSA CM Secretariat will review the proposal and notify the Secretary of its views within 15 calendar days of receipt, if possible.

c. Notifying the Public.

- (1) If the GSA CM Secretariat concurs with the renewal of the advisory committee, the CMO forwards the notice of intent to renew to the Federal Register for publication in accordance with 41 CFR 102-3.65. The 15-day requirement does not apply for committee renewals; therefore, publication of the notice and the filing of the committee's charter can be done concurrently.
- (2) If the GSA CM Secretariat does not concur with the renewal of the advisory committee, the CMO will inform the requesting head of the Departmental element of the reasons why and return the proposal package.
  - (a) If there is agreement that the reasons are valid and changes are made to correct identified problems, the package will be resubmitted to the GSA CM Secretariat for concurrence.
  - (b) If it is agreed that the reasons are not valid, the Secretary of Energy has the final decision authority for renewing the committee.
  - (c) If the Secretary decides to renew, the CMO will carry out the actions in paragraph 4c(1) above and paragraph 4d below.

d. Charter Filing Requirements. After the CMO receives concurrence from the GSA CM Secretariat, he/she will sign and date the charter, and a copy of the charter will be filed in accordance with FACA Section 14(b) and 41 CFR 102-3.70. A copy of the filed charter will be sent to the DFO who will be responsible for the advisory committee.

e. Renewing and Chartering Subcommittees.

- (1) Subcommittees do not need to be formally renewed or chartered if the parent advisory committee's charter authorizes establishment of subcommittees and the subcommittees will not be functioning independently of the parent committee. Subcommittees must—
  - (a) act under the policies that have been established by the parent committee and comply with FACA, as amended, the requirements of 41 CFR 102-3, and this Manual, and
  - (b) have their advice and recommendations reviewed and approved by the parent committee prior to submission to DOE officials.

- (2) Subcommittees that will function independently of the parent advisory committee must be chartered and renewed as separate advisory committees in accordance with the procedures outlined in Chapter II, paragraphs 4a–4d, of this Manual.

5. RENEWAL OF STATUTORY COMMITTEES. Each statutory advisory committee whose termination, as provided for by law, is in excess of 2 years, must be renewed in accordance with 41 CFR 102-3.55.

a. Proposal Packages for Renewal.

- (1) The proposal package for requesting renewal of a statutory advisory committee will include the following documents.

- (a) An Action Memorandum addressed to the Secretary, through the Deputy Secretary or Under Secretary, if applicable, requesting approval to renew the committee. The memorandum must include the following information.

- 1 A description of the continuing purpose and scope of the proposed advisory committee as outlined in the statute.
- 2 A description of the plan for maintaining (or attaining) a fairly balanced committee membership in terms of viewpoints represented and the functions to be performed, including the requirements outlined in the statute.
- 3 An estimate of the budget required for committee operations and sources of funding and an estimate of the Federal work effort, in staff-years, required to support the committee.
- 4 The organization and official responsible for the committee.
- 5 A statement of whether the members will be selected for their expertise or in a representational capacity. Members serving as experts must be appointed as SGEs and may be compensated if approved by the Secretary or directed by law. Members serving as representatives act on behalf of the group or entity specifically identified in their appointment letter. Should compensation for SGE members be proposed, the Action Memorandum will contain a statement of the basis for the proposal. Regardless of whether the members will be serving for their expertise or



as representatives, there must be a statement of whether they are to receive travel expenses and per diem.

6 A recommendation by name or position title, of the DOE employee who will serve as the DFO.

(b) A proposed charter for the committee containing the information in accordance with FACA Section 9(c) and required by 41 CFR 102-3.75(a).

(2) The Federal Register “Notice of Intent to Renew” and a consultation with the GSA CM Secretariat are not required for statutory committees.

b. Concurrence and Approval Procedures. The concurrence and approval procedures for the renewal package are the same as those set forth for an establishment package in Chapter II, paragraph 4b. Consultation with the GSA CM Secretariat is not required.

c. Charter Filing Requirements. After the renewal package has been approved by the Secretary and received by the CMO, the CMO will sign and date the charter, and a copy of the charter will be filed in accordance with 41 CFR 102-3.70(b). A copy of the filed charter will be sent to the DFO.

#### 6. RENEWAL OF UTILIZED COMMITTEES.

a. General. The continuing use of a previously existing, external non-Government group, as a DOE advisory committee must be approved by the Secretary.

(1) These committees may not be treated as Department advisory committees until the renewal procedures set forth at paragraph 4 of this chapter are completed.

(2) A list of the names and affiliations of the existing group members, if available, must be attached to the renewal package.

b. Committee Charters. The renewal charter for a utilized advisory committee contains the same information in accordance with FACA Section 9(c) and required by 41 CFR 102-3.75(a), and the same exceptions outlined in Chapter II, paragraph 6b of this Manual.

c. Notification of Group. Following approval by the Secretary and after consultation with the GSA CM Secretariat, a letter to the group or its sponsoring organization, with a copy of the charter, can be transmitted to the Secretary for signature. If the group agrees to the charter without any substantive changes, public notice in the

Federal Register can take place and the charter filed in accordance with 41 CFR 102-3.70(a).

7. AMENDMENTS TO ADVISORY COMMITTEE CHARTERS. Procedures for amending the charter of an advisory committee are delineated in 41 CFR 102-3.80, 102-3.85, and Chapter II, paragraph 8 of the Manual.
8. TERMINATING ADVISORY COMMITTEES.
  - a. Criteria for Terminating. Termination of an advisory committee must be based on one of the following situations.
    - (1) The criteria in FACA Section 14(a), 41 CFR 102-3.30(b) and 102-3.55.
    - (2) The determination that the advice of the committee is no longer essential to DOE and the committee is no longer in the public interest.
    - (3) The committee has not been staffed for a period of 1 year.
    - (4) The committee has not met within a 2-year period.
  - b. Terminating Nonstatutory Committees, Utilized Committees, or Committees Established by Secretarial Discretion.
    - (1) Proposal Package for Termination. . Normally, the decision to terminate is made by the sponsoring program office. The proposal package for requesting termination of a nonstatutory committee, a utilized committee, or an advisory committee authorized by statute will include the following documents.
      - (a) An Action Memorandum from the head of the sponsoring Departmental element to the Secretary, through the Deputy Secretary or Under Secretary, if applicable, proposing the termination of the advisory committee. The memorandum must—
        - 1 describe the reasons why the committee should be terminated and
        - 2 provide information as to the availability of any final reports or recommendations prepared by the committee.
      - (b) Letters of appreciation to the committee members for signature by the Secretary.

- (2) Concurrence and Approval Procedures. The termination package will be sent to the CMO and the Director of Management for review and concurrence and transmittal to the Secretary for approval.
- (3) Notice of Termination. After receiving approval from the Secretary, the CMO will notify the GSA CM Secretariat of the termination date of the advisory committee.

c. Terminating Statutory Committees.

- (1) A committee directly established by a statute that also provides for its duration or continuity, can be terminated early only by legislation. If the head of the Departmental element sponsoring a statutory committee has determined that the committee should be terminated, he/she must obtain the Secretary's approval following the procedures in paragraphs 8b(1) and 8b(2) of this chapter and then work with the Office of GC to develop the necessary legislation to abolish the provision that established the committee.
- (2) A committee directly established by a statute that does not provide for its continuity must be terminated 2 years after its establishment or renewal in the absence of statutory language to the contrary.
  - (a) The head of the Departmental element sponsoring the committee must notify the Secretary, through the CMO, that the committee is being terminated.
    - 1 The memorandum will contain the information in paragraph 8b(1)(a) and (2) of this chapter.
    - 2 Letters of appreciation to the committee members for services rendered must be prepared for the Secretary's signature and transmitted with the memorandum.
  - (b) After receiving the Secretary's approval, the CMO must notify the GSA CM Secretariat.
  - (c) The CMO, in coordination with the responsible Departmental element head, will work with the Office of the GC to develop legislation to abolish the provision that directed establishment of the committee.

## **CHAPTER IV. MEMBERSHIP OF ADVISORY COMMITTEES**

1. **INTRODUCTION.** Selection and appointment of individuals to serve on advisory committees and decisions on compensation of committee members will be in accordance with FACA Sections 5(b)(2), 5(b)(3), and 7(d); 41 CFR 102-3.30(c), 102-3.60(b)(3), and 102-3.130; DOE Organization Act, Section 624(a); 18 U.S.C. Section 219(a), and pertinent Office of Government Ethics opinion.

Members appointed for their expertise are required to become SGEs, as defined at 18 U.S.C. 202, subject to the criminal provisions at 18 U.S.C. 203-208, 219. Representative members of advisory committees are not considered Federal officials or Federal employees and do not become SGEs. In addition to these requirements, this chapter describes the requirements, procedures, and processes that must be followed when selecting and appointing members to and compensating members of an advisory committee.

2. **GOVERNING PRINCIPLES.**
  - a. The Secretary, Deputy Secretary or Under Secretary, or a designated head of a Departmental element, unless otherwise provided by statute or regulation, must select and approve the appointment of all advisory committee members, except those of utilized committees.
  - b. All heads of Departmental elements, in coordination with the CMO, must ensure that the membership of DOE advisory committees represents a fair balance of interests.
  - c. Individuals must be nominated, selected, and appointed based on their qualifications to contribute to the accomplishment of the committee's objectives, including any statutory requirements.
  - d. Members must serve without compensation unless approval has been obtained from the Secretary to compensate them.
  - e. Members must be appointed for 2- to 3-year terms based on the requirements set forth in the committee's charter except when other terms are provided by statute.
    - (1) Membership terms will be staggered so that at least one third of the membership is retained for continuity. Appointment of new members will provide for rotation to the extent feasible and practicable, but reappointments may be made.
    - (2) A member appointed to fill a vacancy will serve for the remainder of the term for which his/her predecessor was appointed.

- f. Membership must be limited to the smallest number of individuals necessary to accomplish the committee's objectives.
- g. Members serve at the discretion of the Secretary and may be removed without cause.

3. CRITERIA FOR MEMBERSHIP.

a. Balanced Membership.

- (1) Advisory committees will be fairly balanced in accordance with FACA Sections 5(b)(2) and (3) and 41 CFR 102.3-60(b)(3).
- (2) Consideration will also be given to factors such as the geographic region of the country; minority groups; women's organizations; public and private academic institutions, including Black colleges and universities; physically challenged individuals and groups; and the public at large.

b. Ineligibility for Advisory Committee Membership. The following individuals are ineligible for advisory committee membership except as noted.

- (1) Employees of DOE site/facility management and operating or management and Integration contractors (not including subcontractors) that provide goods or services to any program under the supervision or control of a Secretarial Officer. (A memorandum of exception may be submitted with the membership package providing a concise justification that appointment of such individuals will not result in conflicts of interest.)
- (2) Federal Government employees, except SGEs. (Federal employees may be invited to serve in an ex officio capacity or as guests whenever their participation is necessary in advisory committee deliberations.)
- (3) Individuals serving on another advisory committee. (A memorandum of exception may be submitted providing a concise justification for appointment.)

c. Waivers. The CMO has the authority to approve a memorandum of exception for those deemed ineligible for advisory committee membership. The request for an exception must be in writing, present a justification to support the request, include a statement that appointment of the individuals in question will not result in a conflict of interest, and be included in the formal appointment package.

4. PRELIMINARY APPOINTMENT PROCEDURES.

- a. Nominating Members. The heads of Departmental elements who propose the establishment, reestablishment, or renewal of an advisory committee will recommend its members unless the committee's charter prescribes otherwise.

- b. Nominations by Outside Organizations. On occasion it may be desirable to have a professional society, association, or other organization nominate one or more of its members to serve on a DOE advisory committee.
  - (1) Approval of the Office of the Secretary is required before any official contact with the organization.
  - (2) Unless the committee's charter prescribes otherwise, arrangements will be worked out with the outside organization to enable the Secretary to accept or reject nominees without embarrassment to the Department, the organization, or the individuals.
  - (3) Administrative clearance of nominees is required before they are invited to serve.
- c. Security Clearances.
  - (1) An appropriate level security clearance (access authorization) is required for any individual who will serve on a DOE advisory committee that will require the individual to have access to classified information or materials.
  - (2) The program official responsible for nominating members will be responsible for requesting the appropriate level of access authorization in accordance with the requirements set forth in DOE O 470.4 and DOE M 470.4-5. The submission of the formal nomination package and the access authorization request can be done concurrently, but no member will be officially appointed until the access authorization process has been completed and the member has been granted the appropriate DOE access authorization.
- d. Compensation of Members.
  - (1) When extending invitations to individuals to serve as members of DOE advisory committees, it must be explained that the Department does not pay members for their services unless the provisions in paragraph 4d(2) apply.
  - (2) Pay must be provided to SGE members if required by the statute mandating or authorizing the establishment of an advisory committee, authorized by an Executive Order, or written into the committee's charter and approved by the Secretary.
  - (3) If the head of the Departmental element decides to request compensation for SGE members of an advisory committee, the criteria in FACA Section 7(d) and 41 CFR 102-3.130 will be followed.

- (a) A memorandum, to be transmitted through the Deputy Secretary or Under Secretary, will be prepared for the Secretary—
    - 1 requesting approval to compensate the committee members and presenting the reasons and justifications to support the request and
    - 2 recommending the appropriate rate of pay based on the requirements criteria.
  - (b) The memorandum will be transmitted with the formal appointment package [see paragraph 5a(6) below] to obtain the concurrences of the CMO, GC and the Director of Human Capital Management and the approval of the Office of the Secretary. After receipt of approval, the head of the Departmental element works with the Director of Human Resources Management to complete the required personnel actions.
- 5. PROCEDURES FOR APPOINTMENT. The head of the sponsoring Departmental element will prepare a formal appointment package for submittal to the Secretary for signature. The following procedures apply to all membership appointments regardless of whether the advisory committee is newly established, reestablished, or renewed. (Membership on utilized committees is discussed in paragraph 5d below.) Unless a proposed alternate member is duly approved by the Secretary or other appointing authority, such member must participate as a member of the public and may not vote.
  - a. Proposal Packages for Appointment of Members. Proposal packages for advisory committee appointments will include the following information and documents.
    - (1) An Action Memorandum addressed to the Secretary, through the Deputy Secretary or Under Secretary, if applicable, requesting the appointment of members to the advisory committee. The memorandum will include the following information.
      - (a) A background narrative discussing the advisory committee and its purpose and objectives.
      - (b) A discussion of the committee's role, a concise discussion of how the nominees will be used and how a fairly balanced membership on the committee was achieved based on the required disciplines.
      - (c) The number of members on the advisory committee and their tenure.
      - (d) Identification of who will be the committee chair. (NOTE: If the package covers various types of appointments, then each type of

appointment should be identified and a list of affected individuals and the action requested should be included.)

- (e) A statement of whether the members will be selected for their expertise or in a representational capacity. Members serving as experts must be appointed as SGEs and may be compensated if approved by the Secretary or directed by law. Members serving as representatives act on behalf of the group or entity specifically identified in their appointment letter. Should compensation for SGE members be proposed, the Action Memorandum will contain a statement of the basis for the proposal. Regardless of whether the members will be serving for their expertise or as representatives, there must be a statement of whether they are to receive travel expenses and per diem.
- (f) A statement, if necessary, that a memorandum requesting approval for exceptions to paragraphs 3b(1) through 3b(2) is included in the package for approval by the CMO.
- (2) Copy of the current charter for the committee.
- (3) Proposed membership list.
- (4) Biography of each proposed member clearly showing the member's employer
- (5) A matrix/table presenting the members' attributes (e.g., geographic location; residential, industrial, or commercial consumer) to demonstrate that balance criteria have been met.
- (6) A memorandum, if necessary, addressed to the Secretary requesting approval to compensate SGE members for their services and presenting a clear justification of why and at what level of pay they should be compensated.
- (7) A memorandum, if necessary, addressed to the CMO requesting exceptions from one or both of the provisions set forth in paragraph 3b of this chapter and presenting supporting justifications as to why the exceptions are needed.
- (8) Letters of invitation to each member for signature by the Secretary. The letters will be tailored to correspond to the type of appointment for each member and in the case of representational members, specify the group or entity that the member represents. Each member will be provided the following information either in the Secretary's letter or by equivalent means such as a separate information package. The appointment as chairperson of the committee will be stated in the letter going to that



particular member. A copy of the committee's charter will be included with the letters, and all of the letters will contain the following information.

- (a) A description of the committee and its scope and objectives.
  - (b) A description of the member's role and responsibilities.
  - (c) The name of the chairperson of the committee, if known.
  - (d) The frequency of meetings.
  - (9) A statement concerning service without compensation, or service with compensation, if approved by the Secretary, and information on payment of travel expenses and per diem, if applicable.
  - (10) A statement regarding the basis upon which a private sector person is appointed. If as a representative, the statement should include identification of the specific entity the member is expected to represent. If as an expert, the statement should inform the person that he serves as a special Government employee. All members should be advised of appropriate conflict of interest provisions and, as applicable the restrictions of 18 U.S.C. 219(a).
  - (11) Appointment packages for renewals or reestablishments of advisory committee memberships will contain not only letters of invitation, but also letters of appreciation for signature by the Secretary to members whose terms have expired or who have decided to retire from service on the committee.
- b. Concurrence and Approval Procedures. The appointment package follows the same procedures set forth for an establishment package in Chapter II, paragraph 4b, except—
- (1) appointment packages that contain individuals who are, or who are going to be appointed as, SGEs will be submitted to the Director of Human Capital Management for approval or, for Office of Science committees, the Office of Science official designated to perform that function, or for NNSA committees, the NNSA official designated to perform that function,
  - (2) the Office of the Executive Secretariat or the originating office mails the signed letters to the proposed members and sends a copy of the approved package to the CMO for his/her records.
- c. Acceptance of Appointment.

- (1) Acceptance of the invitation by the proposed member constitutes the person's appointment to the committee. The effective date of the member's term is the date of the invitation letter unless another date is specified. SGEs must be sworn in.
  - (2) Special Government employees regardless of whether they are going to be compensated for their service on the committee will be appointed to official positions and paid in accordance with FACA Section 7(d); the policies and procedures in 41 CFR 102-3.130; and DOE O 321.1. The head of the responsible Departmental element must work with the Office of Human Resources Management or the Office of Science official performing that function for the Office of Science committees, to ensure the necessary documents and personnel actions are completed.
  - (3) Members must not participate in any committee business dealing with classified information until receipt of their security clearances.
- d. Membership on Utilized Committees. No formal membership package is required for utilized committees because the membership is determined by the head of the non-Government organization or Federal agency responsible for the committee.

6. ETHICS AND CONFLICT OF INTEREST.

- a. Advisory committee members, in coordination with the DFO and the head of the responsible Departmental element, will comply with the following.
  - (1) Prior to becoming advisory committee members, Federal employees, including SGEs, will disclose in writing (by annually filing either an SF 278, Public Financial Disclosure Report, OGE 450, Confidential Financial Disclosure Report, or an alternate Executive Branch Confidential Financial Disclosure Report with the Office of the Assistant General Counsel for General Law) any financial or other interest that may be affected by the work of the committee or create the appearance of a conflict of interest.
  - (2) Prior to participation, address with the Office of the Assistant General Counsel for General Law the Federal ethics rules and conflict of interest statutes and any possible ethical problems that may arise from serving on a DOE advisory committee, if necessary.
- b. Advisory committee members must not participate in particular matters before the committee, such as grants or contracts, that might have a direct and predictable impact on the companies, organizations, or agencies with which they are associated or in which they have a financial interest.

- c. Program personnel should plan and distribute meeting agendas prior to the meeting date to avoid consideration of particular matters involving entities with which members are associated or should take care that members are informed of potential impacts of specific matters on such entities so that they can disqualify themselves from participation in these matters.
- d. Advisory committee members must be aware of, and take care to abide by, the following general conflict of interest regulations.
  - (1) Members will refrain from any use of their membership that is, or gives the appearance of being, motivated by the desire for private gain.
  - (2) Members will not use, either directly or indirectly, any inside information obtained as a result of advisory committee service for private gain.
  - (3) Members will not use their positions in any way to coerce, or give the appearance of coercing, another person to provide a financial benefit to the member or any person with whom he or she has family, business, or financial ties.
  - (4) Members who are appointed special Government employees must follow the prohibitions on accepting gifts contained in 5 CFR 2635.201 et seq. if they are offered as a result of committee membership.

## CHAPTER V. ADVISORY COMMITTEE MEETINGS

1. INTRODUCTION. The preparation for and conduct of advisory committee meetings must be in accordance with FACA Sections 10 and 11; 41 CFR 102-3.30(d) and (e), 102-3.120, 102-3.125, 102-3.140, 102-3.145, 102-3.150, and 102-3.155 (see also Appendix A to Subpart D). See also amendment to FACA Section 10 (c) in P.L. 94-409, (December 13, 1976) substituting Sunshine Act provisions for previous Freedom of Information Act provisions for conducting closed meetings. In addition to these requirements, this chapter describes the DOE requirements, procedures, and processes that must be followed in the preparation for and conduct of advisory committee meetings.
2. SUPPLEMENTAL DOE REQUIREMENTS.
  - a. Departmental advisory committees will not hold any, or part of any, meeting in the absence of a quorum of duly appointed members. Unless otherwise set forth in the charter of the committee, a quorum must consist of a majority of the committee's authorized membership (i.e., one more than one half).
  - b. Departmental advisory committees will not hold any meeting in the absence of the DFO. If the DFO is responsible for more than one advisory committee and both committees have meetings scheduled for the same day, the DFO must designate, in writing, a DOE employee who must attend the meeting the DFO will not attend and assume the DFO's responsibilities.
  - c. Departmental advisory committees must not make recommendations or give advice with respect to matters not considered by the committee in regular sessions or not within the scope of its functions as set forth in the committee's charter.
3. OPEN MEETINGS.
  - a. Public Participation. The criteria for public participation in 41 CFR 102-3.140 must be considered when scheduling, preparing for, and conducting advisory committee meetings.
    - (1) Any public participation must be subject to reasonable rules or procedures that may be established by the DFO and the advisory committee.
    - (2) Public attendance at open meetings (including teleconferences, video conferences, the Internet or other electronic medium) must not be constrained in an unreasonable manner. Attendance must be on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room or other medium. Public participation must be allowed as follows.
      - (a) Written Statements. The submission of written statements must be in accordance with FACA Section 10(a)(3), 41 CFR 102-3.140(c), and must not be administratively hampered by arbitrary conditions

of length, format, number of copies, typography, etc. Persons who desire to submit statements should be advised to address them to the DFO of the advisory committee.

- (b) Oral Statements. Oral statements must be in accordance with FACA Section 10(a)(3), 41 CFR 102-3.140(d), and this paragraph.

- 1 A minimum of 15 minutes must be allotted at the conclusion of each open meeting for the presentation of oral statements if comments are not taken throughout the meeting.
- 2 A statement must be included in the Federal Register notice announcing how comments from the public will be taken during the meeting.
- 3 Committees may establish procedures requiring interested persons to obtain advance approval for participation.

- (c) Questions. Questioning of committee members or participants by the public is not permitted except with the approval of the DFO and chairperson.

- (d) Rosters and Related Information. For the benefit of attendees from the general public (and media), rosters that list the names and affiliations of the committee members and copies of any other documents that may be distributed at the meeting must be available at the door to the meeting room.

- b. News Media Coverage of Meetings. DOE will allow the news media direct access to qualified news sources within DOE and will allow as free a flow of information as possible within orderly administrative limits.

- (1) Media representatives attending and reporting on open (and the open portion of partially closed) committee meetings are at liberty to use tape recorders, cameras, and electronic equipment for broadcast purposes. The use of such equipment, however, must not interfere with the orderly conduct of the meeting. (To preclude disruptions, encourage news media personnel to position equipment before meetings start and remove it after adjournment or during intermission periods.)

- (2) Contacts with the media concerning coverage of meetings will be coordinated with the Office of Public Affairs. A public information specialist must assist and facilitate the coverage arrangements.

- c. Public Notification.

- (1) A “Notice of Open Meeting” for each advisory committee meeting must be published in the Federal Register in accordance with 41 CFR 102-3.150(a). Whenever possible, 30 days notice will be given.
- (2) If approved by the GC or GC designee, less than 15 calendar days notice may be given, in accordance with 41 CFR 102-3.150(b).
- (3) Meetings may also be announced by press releases, direct mailing, publication in trade and professional journals, or by notice to special interest and community groups affected by the committee’s deliberations. This procedure, however, will not be a substitute for Federal Register publication.

d. Preparation of Notices.

- (1) No later than 30 calendar days before the scheduled meeting date, the DFO will prepare a “Notice of Open Meeting” containing the information required in 41 CFR 102-3.150(a); if the meeting is partially or fully closed, the DFO will prepare a “Notice of Partially Closed or Closed Meeting” containing the information in 41 CFR 102-3.155, and the following information.
  - (a) The name of the parent committee should be included in announcements for subcommittee meetings.
  - (b) Name, address, and telephone number of the individual to be contacted by persons who desire to make oral presentations before the committee/subcommittee or submit written statements.
  - (c) Purpose of the committee/subcommittee. (For subcommittees, the purpose of the parent committee should also be given.)
  - (d) Information on public participation and availability of minutes of the meeting (or of open portion, if partially closed) within 45 days of the meeting or availability of transcripts and other documents in accordance with FACA Sections 10 and 11.
- (2) The notice must be forwarded to the office of the Assistant General Counsel for Legislation and Regulatory Law for review and concurrence and then submitted to the CMO for signature and processing to the Federal Register.
- (3) If the meeting is cancelled or the date, time, or location of a meeting changes from that previously announced in the Federal Register, an appropriate notice will be published promptly. The amended notice should reference the volume, page number, and date of the previous Federal Register notice.

4. CLOSED MEETINGS.

- a. Criteria for Closed Meetings. The decision to close (limit public access to) an advisory committee meeting to the public must be based on the criteria in FACA Section 10(d); 41 CFR 102-3.30(d), 102-3.150, and 102-3.155; and 5 U.S.C. 552b(c), Government in the Sunshine Act. The exemptions listed in the Government in the Sunshine Act are available for use by Federal agencies; however, they are not mandatory. As such, they should be waived whenever practicable to satisfy the basic intent of the law, which is openness in Government.
- b. Procedures for Requesting Closed Meetings. Requests for closed meetings must be prepared in accordance with the procedures in FACA Section 10(d) and 41 CFR 102-3.155(a), (b), and (c). Conducting a meeting or portion of a meeting that is closed to the public requires early planning, formal documentation, and specific concurrences and approvals.
  - (1) Requests for Meeting in Closed Session .
    - (a) Requests to close meetings to the public must be prepared and reviewed on a case-by-case basis.
    - (b) No later than 45 calendar days before the scheduled meeting an Action Memorandum addressed to the Secretary, through the Deputy Secretary or Under Secretary, must be prepared by the DFO of the advisory committee for signature by the head of the Departmental element sponsoring the committee. The memorandum should present a concise explanation of the facts and reasons why the meeting should be closed and include the following attachments:
      - 1 a formal notice of determination, for signature by the Secretary, which provides a statement of the reasons for the closing or partial closing of the meeting and identification of the pertinent exemptions;
      - 2 the agenda or tentative agenda for the meeting showing when the meeting must be partially closed or closed and either the first or the last agenda item; and
      - 3 a copy of the “Notice of Closed Meeting”, or Notice of Open Meeting/Partially Closed Meeting,” prepared in accordance with paragraph 3c above.
    - (c) If a committee has a legitimate need for frequent closed meetings, the committee may submit a request for one “Notice of

Determination” to cover a series of meetings. As a general rule, the series of meetings must cover the same topics, be closed on the same statutory bases, and not extend for the duration of the charter.

(2) Concurrence and Approval Procedures.

- (a) Request packages must be submitted to the CMO for review and concurrence and then transmitted to the Office of GC for review and concurrence before submission to the Secretary for approval.
- (b) When meeting in closed session or partial session has been approved by the Secretary and the Notice of Determination signed, the original request package must be returned to the CMO for signature and processing of the Federal Register notice.

c. Conduct of Closed Meetings.

- (1) When a meeting is closed, members will not discuss or disclose the matters discussed except with other members and committee staff personnel.
- (2) If only part of a meeting is closed, the agenda items will be arranged to facilitate public attendance at the open portion.
- (3) When a meeting is partially closed, the agenda will be structured to minimize the amount of time needed for the closed session.
- (4) When a meeting (or portion of a meeting) is closed, only members of the committee, its staff, and specified Federal employees will be permitted to attend.

5. MINUTES AND TRANSCRIPTS OF ADVISORY COMMITTEE MEETINGS.

- a. Detailed minutes of each advisory committee meeting must be kept in accordance with 41 CFR 102-3.165. In addition to 41 CFR 102-3.165 requirements, the following items must be included in the minutes.
  - (1) Name of the committee (or subcommittee and its parent committee).
  - (2) Names of any members who recused themselves from the meeting and the reasons and a statement that they did not participate and were not present during the discussion.
  - (3) Description of the extent to which the meeting was open to the public and the public participation.



- b. Verbatim transcripts may be taken and must contain the same information shown in paragraph 5a above; however, verbatim transcripts are not a substitute for the minutes. If a verbatim transcript will be prepared, arrangements must be made for a court reporter to be present to record the meeting proceedings.
- c. The chairperson of the committee will certify the contents of the minutes and, if applicable, the transcript. The certification should indicate that the contents are accurate and complete.
- d. The minutes will be transmitted to the CMO within 45 days after the meeting. A CD or diskette of the minutes and transcript (if recorded) must be forwarded to the CMO for transmittal to DOE's Public Reading Room, where they will be available to the public for inspection and copying. In addition, minutes and other public advisory committee documents may also be made available to the public via the internet.
- e. The DFO must forward copies of the minutes and/or transcript to appropriate DOE officials and committee members.

6. MEETING RESPONSIBILITIES FOR DESIGNATED FEDERAL OFFICERS AND ADVISORY COMMITTEE CHAIRPERSONS.

a. Designated Federal Officers.

(1) General Responsibilities.

- (a) Work closely with the program and/or the CMO to ensure appropriate deadlines are met and that committees meet the objectives for which they were established.
- (b) Maintain the records, reports, transcripts, minutes, working papers, drafts, studies, agendas, and other documents that are made available to or are prepared by the advisory committee.
- (c) Initiate all personnel actions for new members, if required.
- (d) Initiate letters of invitation, welcome, and appreciation and certificates of appreciation, when appropriate.
- (e) Serve as the main resource persons available to the program and the organization regarding the renewal, reestablishment, or rechartering of the committees for which they are responsible, and initiate all requests for committee continuance.
- (f) Work closely with members to identify potential individual conflicts of interest.

(2) Before Meetings.

- (a) Invite guest speakers to meetings and make necessary arrangements for speakers. Ensure guest speakers have special or preeminent professional, technical, or scientific information relative to the matters under consideration by the committee.
- (b) Prepare agendas, including concise descriptions of each major subject or problem listed in agendas and all previous decisions or actions related to each agenda item. Include, where appropriate a listing of all affected parties or interest.
- (c) Send agendas and copies of all information relating to them to members in advance of meetings.
- (d) Arrange for resource persons and supplementary materials to aid the committee in dealing with agenda items.
- (e) In consultation with GC, determine whether any members have conflicts of interest in conjunction with the topics to be discussed (members with conflicts are required to recuse themselves and recusals must be announced at the beginning of meetings).
- (f) Make logistical arrangements for meetings, including, when necessary, arranging for overnight accommodations for members.
- (g) Perform the following duties related to meeting notices.
  - 1 Maintain lists of persons and organizations who have requested notification and notify them in advance of meetings.
  - 2 Ensure meeting notices are published in the Federal Register before meetings.
  - 3 Ensure other forms of notice, such as press releases and notices in professional journals, are used to the extent practicable.
  - 4 Notify members of the dates, time, and place of each meeting and arrange for the preparation of the necessary travel documents.

(3) During Meetings.

- (a) Be present at meetings and sit next to the chair so they may confer, as necessary.

- (b) Ensure committees conduct business in accordance with all applicable regulations, policies, and procedures.
- (c) Ensure accurate records are kept of committee deliberations. If a closed portion of a meeting is recorded, the DFO ensures that only an official transcriber for the organization performs the recording.
- (d) Record motions and votes on each item of business; take notes on discussions and proceedings as necessary to prepare the minutes.
- (e) Authorize the adjournment of any committee meeting in the event of unwarranted departure from the agenda of the meeting or if adjournment is determined to be in the public interest.

(4) After Meetings.

- (a) Prepare minutes and make copies available promptly to members and the general public.
- (b) Ensure that minutes are certified by the chairperson within 90 calendar days of the meeting to which they relate. See 41 CFR 102-3.165(c).
- (c) Arrange for the preparation of pay, if required, and travel vouchers so that members may be reimbursed.

b. Chairpersons.

- (1) Preside at all committee meetings.
  - (a) Ensure agendas are followed as closely as possible.
  - (b) Appoint other committee members to preside if it is necessary for the Chairperson to leave due to a conflict of interest or other circumstances.
- (2) Ensure all rules of order and conduct are maintained during each session.
  - (a) Ensure committee members disqualified from participation in committee discussion do not participate in the discussion or vote.
  - (b) Ensure minutes and transcripts of meetings clearly indicate when members did not participate and were not present during discussions.
- (3) Call on individuals for opinions and comments and terminate any unnecessary discussion.

- (4) Call for votes, as required.
- (5) Control public participation during the open portion of meetings.
- (6) Certify the accuracy of the minutes and/or transcripts of each committee meeting before their distribution.

## CHAPTER VI. TRAVEL COSTS

1. INTRODUCTION. Travel costs for advisory committees may be allowed in accordance with FACA Section 7(d)(1)(B), 41 CFR 102-3.130(k), and Section 624 of the DOE Organization Act. In addition to these requirements, this chapter describes the DOE requirements, procedures, and processes that must be followed when requesting and approving travel costs for travel related to advisory committees.
2. DEPARTMENTAL CRITERIA.
  - a. The Department may allow travel expenses for advisory committees in accordance with DOE M 552.1-1A, U.S. Department of Energy Travel Manual, dated 2-17-06 and 41 CFR Part 300, which is the principal source of policy for Federal employee travel.
  - b. If reimbursement of travel expenses incurred on committee business has been authorized at the establishment or renewal of a committee and fiscal or other considerations make it appear necessary to terminate such reimbursement prior to a subsequent renewal of the committee, contact the CMO for guidance. If termination of travel reimbursement is authorized, members must be so advised prior to their traveling on committee business.
3. TRAVEL EXPENSE RULES AND LIMITS.
  - a. Coverage. Advisory committee members may be reimbursed for travel expenses only when they are on committee business while away from their residences or regular places of business.
  - b. Tickets. Generally, the Department will provide advisory committee members with a Government fare common carrier ticket.
    - (1) If DOE is unable to provide a member with a common carrier ticket, the member may use personal means to purchase transportation. (When transportation costs exceed \$100, a senior DOE official is required to review the circumstances of the purchase before reimbursement, which may not exceed the Government-authorized fare.)
    - (2) Unused tickets should be returned promptly to the DOE program office.
  - c. Major Travel to and from Meetings. The most usual travel mode is by common carrier (air or train, with air being the most common mode). Members may also use their privately owned vehicles to travel to meetings. The applicable rules are as follows.

- (1) Air Travel. Airfare is limited to the regular, round-trip, coach-class fare or, when available, Government contract airlines between the member's residence or regular place of business and the meeting site.
  - (a) DOE will arrange an electronic ticket (e-ticket), that will be retrieved at the airport ticket counter, and mail the itinerary for each committee member traveling by air.
  - (b) When travel is between cities (city-pairs) served under the Government contract airline program, DOE will issue an e-ticket for transportation on the contract airline.
    - 1 Use of a noncontract airline must be justified when service from a contract airline is available.
    - 2 Committee members must make their own airline reservations when using a noncontract airline for travel to cities serviced by contract airlines.
    - 3 Committee members who wish to make changes in their travel itineraries (different from direct, round-trip travel between their residences and the meeting site) should consult with the Departmental element that sponsors the committee about procedures.
    - 4 Committee members may upgrade their accommodations (e.g., to first class) by contacting the carrier directly and paying any fare increases.
    - 5 Members may also reroute their travel provided they pay any resultant additional costs directly.
  - (c) International travel by air must adhere to the provisions of the Fly America Act. (Members should check with the Departmental element to find out whether this regulation applies.)
- (2) Train Travel. Committee members may also travel to and from meetings by train.
  - (a) Travel by train will be authorized only when it is advantageous to the Government.
  - (b) If it is not advantageous to the Government, reimbursement for travel by train will be limited to the actual fare or the regular, round-trip, coach-class air fare between the two traveling points, whichever is less.

- (3) Privately Owned Vehicle. A member may also travel to and from meetings by his/her privately owned vehicle.
  - (a) DOE will reimburse the member at the current Government mileage allowance rate and for actual bridge, turnpike, ferry, and parking fees.
  - (b) Total travel expenses by privately owned vehicle generally must not exceed the usual cost by common carrier.
- (4) Rental Cars. DOE will not reimburse a member for rental car charges unless use of a rental car can be justified and the member has received specific, advance approval for using a rental car.
- d. Incidental Transportation. DOE will reimburse committee members for the following incidental expenses associated with transit to and from airports and to and from hotels and meeting sites:
  - (1) charges for buses, airport limousines, and subways;
  - (2) charges for taxis (when they are the most appropriate means of transportation);
  - (3) use of privately owned vehicles, including tolls and parking fees, in accordance with paragraph 4c(3) above; and
  - (4) charges for rental cars when authorized in advance and properly justified.
- e. Lodging, Meals, and Incidental Subsistence Expenses.
  - (1) DOE will reimburse committee members for lodging, meal, and incidental expenses associated with travel for meetings using a per diem allowance (i.e., a daily payment instead of reimbursement for actual expenses).
    - (a) The per diem allowances paid for official travel within the continental United States are computed under the lodgings-plus basis per diem system and services.
    - (b) The maximum per diem rates include a maximum amount for lodging expenses. Committee members will be reimbursed for actual lodging costs, supported by receipts, up to this amount.
    - (c) A fixed allowance for meals and incidental subsistence expenses is also included in the maximum per diem rate. The meals and incidental subsistence expense rate is payable without itemization of expenses or receipts. (Meals and incidental subsistence expenses are prorated for partial days of official travel.)

- (2) A committee member may be authorized to travel on an actual lodging expense basis rather than a per diem basis for lodging.
    - (a) In these cases, DOE will reimburse for actual lodging not to exceed the maximum daily amounts allowed for these expenses. For travel within the continental United States, the maximum must not exceed 300 percent of the applicable maximum lodging per diem rate prescribed for the area.
    - (b) It is necessary to submit receipts for lodging and individual expenditure over \$75.00 when meals and incidental subsistence expenses are reimbursed on an actual basis, however, individuals should retain such receipts to prove such expenditures in the event that their travel expenses are audited.
  - (3) When travel is outside the continental United States, other rates specified within the travel regulations for the specific locality apply.
  - (4) With respect to lodging, a member is responsible for—
    - (a) making, confirming, changing, or guaranteeing his/her own hotel reservations and
    - (b) paying his/her own hotel bills. (DOE will reimburse actual costs not to exceed the maximum daily rate specified for lodging.)
  - (5) DOE can make hotel reservations for committee members with a Government travel or personal credit card from the member (because DOE cannot be liable for hotel expenses).
    - (a) Frequently DOE locates appropriate lodging for members and arranges for blocks of rooms to be reserved until a certain date to permit members to make their reservations (but members must personally contact the hotel to make or guarantee their reservations.)
    - (b) Members must still submit a legible copy of the hotel bill with their travel reimbursement vouchers (paragraph 3f) to be reimbursed for this expense within the maximum amount allowed for lodging [see paragraphs 3c(1) through 3c(4) above].
  - (6) Receipts are required for all cash expenditures over \$75.00 and for certain types of expenses, such as excess baggage, passenger transportation services, and rental cars, regardless of amount.
- f. Travel Expense Reimbursement Vouchers. Information for completion of travel expense reimbursement vouchers is in DOE M 552.1-1A and 41 CFR 301-52.



Committee members who have questions about the travel rules or how to claim reimbursement can consult with the Departmental element sponsoring their committees before traveling or before submitting the reimbursement vouchers. (Incomplete or incorrectly completed vouchers are a major cause of delay in reimbursing members.)

## CHAPTER VII. RECORDS AND REPORTS

1. INTRODUCTION. All records, reports, reviews, and other documents prepared by and related to advisory committees must be kept, maintained, and distributed in accordance with FACA Sections 6, 7(b), 8(b), 10(b)-(c), 12(a), and 13; and 41 CFR 102-3.115, 102-3.165, 102-3.170, and 102-3.175. In addition to these requirements, this chapter describes the DOE requirements, procedures, and processes for keeping, maintaining, and distributing the records, reports, reviews, and other documents relating to advisory committees.
2. RECORDS.
  - a. Departmental Committee Record System. The CMO must maintain a Departmental Committee Record System in accordance with 41 CFR 102-3.115. In addition to the required hard copy records, the following records for each DOE advisory committee must be included.
    - (1) The original establishment proposal and any original renewal proposals.
    - (2) Copies of letters that were used to file the charter and/or amendments or revisions with the Congressional standing committees.
    - (3) Copies of Notices of Establishment published in the Federal Register for committees established by Secretarial authority.
    - (4) The original written approval for the establishment of any subcommittee.
    - (5) Copies of the committee's membership proposal packages.
    - (6) Original Notices of Determination, copies of the Notices of Closed/Partially Closed Meetings published in the Federal Register, and related documents.
    - (7) Copies of all Notices of Open Meetings, as published in the Federal Register.
    - (8) Copies of detailed minutes and transcripts of all meetings.
    - (9) Copies of all reports issued by the committee.
  - b. Designated Federal Officer File. The DFO must maintain the following records and reports pertaining to the DFO's committee.
    - (1) Copies of all records required in paragraph 2a above.
    - (2) Copies of all records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agendas, or other documents that were made available to or prepared for or by the committee.

- (3) Data or documents to prepare the major items of the annual comprehensive review on the advisory committee and the closed meeting report.
- (4) Signed copies of all written recusal executed by members.

3. REPORTS.

- a. Committee Issued Reports. Whatever their form or substance, 10 copies of each advisory committee report and related background papers will be forwarded to the CMO for transmittal to DOE's Public Reading Room and the Library of Congress in accordance with FACA Section 13 and 41 CFR 102-3.175(d). The DFO must submit these copies to the CMO within 10 days of the date the original is delivered to the appropriate DOE official. This requirement does not pertain to minutes of meetings or to any of the other reports that are discussed below.
- b. Annual Comprehensive Review of Federal Advisory Committees.
  - (1) An annual comprehensive review of Federal advisory committees must be conducted in accordance with FACA Section 7(b) and the requirements of 41 CFR 102-3.105(e) and 102-3.175(b) and using the Government-wide shared Internet-based system that the GSA CM Secretariat established.
  - (2) The GSA CM Secretariat will electronically issue instructions to Agencies regarding reporting requirements, procedures, and submission dates.
    - (a) The CMO will serve as the central point for coordination of the annual comprehensive review and will be responsible for informing DFOs of the GSA CM Secretariat's requirements and electronically submitting the Department's consolidated report to the GSA CM Secretariat.
    - (b) DFOs will be responsible for accurately and completely filling out the individual electronic committee reports by the due date established by the CMO for submission.
  - (3) The annual comprehensive review will entail an in-depth examination of all advisory committees, and any advisory committees determined to be no longer needed will be terminated. Advisory committees established by statute will also be reviewed, and if appropriate, their termination will be recommended. The annual comprehensive review must contain the information required by FACA Section 7(b) and the following.
    - (a) A description of how the membership is balanced in terms of points of view represented and functions performed.
    - (b) An explanation of why the advice or information cannot be obtained from other sources.

- (c) An explanation of any duplication of effort with other committees, within the Department or with other Federal agencies.
- (d) A description of how the committee's reports, recommendations, and advice have been used in Departmental policy formulation, program planning, decision making, achieving economies, etc.
- (4) The annual comprehensive review will contain a justification for each advisory committee the Secretary decides should be continued. The justification will describe what the committee does, why there is a compelling need for its continuance, and how it has a fairly balanced membership.

c. Reports of Closed Meetings.

- (1) Each advisory committee that held a closed or partially closed meeting must prepare and issue an annual closed meeting report in accordance with FACA Section 10(d) and 41 CFR 102-3.175(c). The report sets forth a summary of activities during the closed sessions and such related matters as would be informative to the public consistent with the Freedom of Information Act (FOIA). (Questions involving interpretation of policy under FOIA will be directed to the Office of the GC.)
- (2) Heads of Departmental elements who sponsor advisory committees with closed or partially closed meetings will submit the annual report (original and nine copies) with a transmittal memo addressed to the CMO by February 28 of the following calendar year. Each report will be prepared using the following format.

(a) [6450-01-P]

HEADER—U.S. DEPARTMENT OF ENERGY  
(Name of sponsoring Departmental element)  
20XX Report of Closed Meetings of the (official title of advisory committee) under Section 10(d) of the Federal Advisory Committee Act

- (b) REPORTING PERIOD—Dates (Calendar Year)
- (c) REPORTING ORGANIZATION—Name of sponsoring Departmental element
- (d) RESPONSIBILITY—Account for each closed or partially closed meeting held by their advisory committees during the previous calendar year. If no closed meetings were held, a negative report will be submitted.

- (e) **SUBSTANCE**—The report will consist of a separate narrative summary for each advisory committee that held one or more closed or partially closed meeting. Each summary must account for all meetings held and will include the following data for each meeting.
    - 1 Date and place of meeting.
    - 2 Portion of the meeting (by time and agenda item) that was closed to the public, and the provisions of 5 U.S.C. 552b(c) which supported the determination to close the meeting.
    - 3 Titles or topics of all reports, records, or other information (written or oral) presented to the committee during the closed portion of the meeting or provided in advance to its members in preparation for the meeting.
    - 4 Description of the discussion of each agenda item during the closed session.
    - 5 Description of any actions taken at the closed session (e.g., a report or recommendation on Agency item X was issued). If possible, indicate the ultimate disposition of the report or recommendation as of the end of the calendar year.
  - (f) **SIGNATURE**—Each report must be signed by the committee's chairperson and the DFO.
  - (g) **CAUTIONS**—If the passage of time or some particular event has effectively negated the exemption that supported conducting meetings in closed session, the minutes of the meetings will be submitted in lieu of the report.
- (3) The CMO will file eight copies of the report with the Library of Congress and one copy with DOE's Public Reading Room and publish a notice of availability of the report in the Federal Register by March 30 of each year.
- 4. **PUBLIC ACCESS.** All of the records and reports listed in this chapter and all other documents that were made available to or prepared for or by each advisory committee must be made available in accordance with FACA Section 10(b), 41 CFR 102-3.170, subject to the exemptions contained in 5 U.S.C. 552b, for public inspection and copying at a single location in the DFO's office and the DOE Public Reading Room. One copy of the records and reports in this chapter will be forwarded to the Public Reading Room. If the documents are unwieldy (i.e., maps, drawings) and their duplication would be

excessively costly, the DFO must instead file a description of the documents and specify the location at which the documents will be available for public inspection.

5. DISPOSITION OF ADVISORY COMMITTEE DOCUMENTS. Contact the Chief Information Officer to obtain guidance on the disposition of all advisory committee records.